

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN R. FENNELL,

Defendant-Appellant.

FOR PUBLICATION

January 8, 2004

9:00 a.m.

No. 241339

Wayne Circuit Court

LC No. 01-009601-01

Updated Copy

March 26, 2004

Before: Gage, P.J., and White and Cooper, JJ.

COOPER, J.

Following a jury trial, defendant Stephen R. Fennell was convicted of nineteen counts of willfully and maliciously torturing or killing animals, MCL 750.50b(2). The trial court sentenced him to three years' probation, with the first year to be served in the county jail. He was acquitted of an additional charge of burning a building. Defendant appeals as of right. We affirm.

In this case we are asked to determine whether the animal torture statute, MCL 750.50b(2), is a specific or general intent crime. There is no case law in Michigan describing the degree of intent required under this statute and therefore this is an issue of first impression. After reviewing the statute's language and the construction of previous animal cruelty statutes, we conclude that the portion of MCL 750.50b(2) relating to killing or torturing an animal is a general intent crime.¹

I. Background Facts

The Grosse Pointe Hunt Club is a private equestrian facility that maintained two stables to house horses. On July 7-8, 2001, one of the stables at the hunt club burned to the ground.

¹ We note that the statutory language related to the administering of poison to an animal or exposing an animal to a poisonous substance is not implicated in this case. MCL 750.50b(2). Thus, this opinion does not address whether the conduct proscribed by that language constitutes a specific intent or general intent crime.

Nineteen of the twenty-four horses kept in that stable died as a result of the fire. The fire began when a firecracker exploded inside the stable.

Joseph Evola lived at his parents' home across the street from the hunt club in July 2001. On the night in question, several of Joseph's friends, including defendant, had gathered at the Evola residence. Joseph claimed that defendant possessed a variety of firecrackers that he had purchased in Ohio. Several people in the group recalled overhearing defendant mention something about throwing firecrackers to scare the horses. And Joseph testified that he saw defendant light a firecracker and make an arm movement to throw it toward the hunt club barn. He then observed the firecracker go over the hunt club's fence. The firecracker was described as a "mortar," the kind that goes up into the air and sparks. Gregory Grosfield, another individual in the group, testified that he saw a firework hit the hunt club barn at approximately 4:15 a.m., and begin to spark.

When defendant threw the firework, everyone ran inside. Within minutes, several witnesses inside the Evola residence claimed that they could see a light glow coming from the barn and that it was obvious the barn was on fire. But defendant dissuaded them from calling for help by saying it would look suspicious. Instead, he suggested that they claim that they were asleep when the fire began.

Raymond Neal, the night watchman for the hunt club, was on duty the night in question. He recalled going out to the barn to close the doors because someone was setting off fireworks in the area. As he was closing the doors, Mr. Neal claimed he felt something go past his head and then saw flames going up the barn walls. Although he was able to let some of the horses out, Mr. Neal testified that the fire was too intense for him to rescue the remainder of the horses in the barn. Further inspection of the barn revealed no evidence of electrical or mechanical failure that might have caused the fire.

II. Jury Instructions

Defendant initially challenges the trial court's refusal to instruct the jury that the prosecution was required to show that defendant specifically intended to kill or torture the horses. We disagree. Claims of instructional error are reviewed de novo on appeal.²

It is the function of the trial court to clearly present the case to the jurors and instruct them on the applicable law.³ Jury instructions must therefore include all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence.⁴ Even if the instructions are somewhat imperfect, reversal is not required if the

² *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

³ *People v Katt*, 248 Mich App 282, 310; 639 NW2d 815 (2001).

⁴ *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

instructions fairly presented the issues to be tried and were sufficient to protect the rights of the defendant.⁵

When interpreting statutes, the primary goal of the reviewing court is to ascertain and facilitate the Legislature's intent.⁶ In making this determination, we look to the specific language of the statute.⁷ Where the language of the statute is clear, judicial construction is neither necessary nor permitted and the statute must be enforced as written.⁸ But when reasonable minds can differ as to the meaning of a statute, judicial construction is appropriate.⁹ In such instances, courts must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose.¹⁰ We note that the Legislature is presumed to be familiar with the rules of statutory construction and to act with knowledge of appellate court statutory interpretations.¹¹

In the instant case, the trial court instructed the jury with regard to MCL 750.50b(2) as follows:

To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the defendant killed and/or tortured an animal or did anything that resulted in the killing or torturing of an animal. Torture means severe physical or mental pain, and agony or anguish.

Second, that at the time of the commission of the crime, the defendant knew that his actions were wrong and intended to cause physical or mental harm to an animal.

Third, that the defendant had no just cause or excuse for his actions.

Defendant claims that these instructions were erroneous based on the Legislature's use of the term "willfully" in the statute. According to defendant, this terminology indicated that the animal torture statute was a specific intent crime. To determine the intent required in a criminal statute we must look to the mental state set forth in the statute.¹² A crime requiring a particular criminal intent beyond the act done is generally considered a specific intent crime; whereas, a

⁵ *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

⁶ *People v Stone Transport, Inc*, 241 Mich App 49, 50; 613 NW2d 737 (2000).

⁷ *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999).

⁸ *Id.*

⁹ *People v Warren*, 462 Mich 415, 427; 615 NW2d 691 (2000).

¹⁰ *People v Adair*, 452 Mich 473, 479-480; 550 NW2d 505 (1996).

¹¹ *People v Higuera*, 244 Mich App 429, 436; 625 NW2d 444 (2001); *People v Ramsdell*, 230 Mich App 386, 392; 585 NW2d 1 (1998).

¹² *People v Disimone*, 251 Mich App 605, 610; 650 NW2d 436 (2002).

general intent crime merely requires "the intent to perform the physical act itself."¹³ Put another way, "specific intent" is often used "to designate a special mental element which is required above and beyond any mental state required with respect to the *actus reus* of the crime."¹⁴

The animal torture statute at issue in this case provides in pertinent part as follows:

A person who *willfully*, maliciously and without just cause or excuse kills, tortures, mutilates, maims, or disfigures an animal . . . is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$5,000.00, or community service for not more than 500 hours or any combination of these penalties.^[15]

There is no definition of the term "willfully" provided in the statute. Further review of the pertinent statutory language also fails to explicitly state the degree of intent required under this crime. As such, judicial construction is required.

When not specifically defined in the statute, every word should be afforded its plain and ordinary meaning and considered in context.¹⁶ If the legislative intent cannot be determined from the statute itself, courts may refer to dictionary definitions.¹⁷ The term "willful" is defined in Black's Law Dictionary as describing an action that is "[v]oluntary and intentional, but not necessarily malicious."¹⁸

We further note that while the term "willfully" has been considered in some Michigan cases to denote specific intent,¹⁹ the case law has also indicated that its definition is dependent on the context in which it is used.²⁰ For instance, common-law arson is considered a general intent crime despite the fact that it is defined as the willful or voluntary and malicious burning of the dwelling house of another.²¹ Our Supreme Court noted that in common-law arson the term "willfully" added nothing to the common-law concept of malice.²²

¹³ *Id.*, quoting *People v Davenport*, 230 Mich App 577, 578; 583 NW2d 919 (1998).

¹⁴ *People v Henry*, 239 Mich App 140, 144; 607 NW2d 767 (1999), quoting *People v Langworthy*, 416 Mich 630, 639 n 9; 331 NW2d 171 (1982), quoting LaFave & Scott, Criminal Law, § 28, p 202.

¹⁵ MCL 750.50b(2) (emphasis added).

¹⁶ *People v Wilson*, 257 Mich App 337, 345; 668 NW2d 371 (2003).

¹⁷ *People v Stone*, 463 Mich 558, 563; 621 NW2d 702 (2001).

¹⁸ Black's Law Dictionary (7th ed).

¹⁹ See *Disimone*, *supra* at 611.

²⁰ See *People v Nowack*, 462 Mich 392, 406-407; 614 NW2d 78 (2000); *People v Culp*, 108 Mich App 452, 456-457; 310 NW2d 421 (1981).

²¹ *Nowack*, *supra* at 402; 406-407.

²² *Id.* at 406.

We also consider the instant statute's language in light of predecessor statutes and historical developments.²³ For example, under MCL 750.377,²⁴ it was considered a crime for any person to "wilfully and maliciously kill, maim, or disfigure any horses, cattle, or other beasts of another" This language is almost identical to that used in MCL 750.50b(2). This is noteworthy because several cases discussing MCL 750.377 have held that it only required a showing of general malice.²⁵ In determining that malice need not be directed toward the animal or the animal owner, the Court in *People v Tessmer* noted that the requisite malice required was the general malice of the law of crime.²⁶ Further, in *Culp*, this Court specifically distinguished the statutory crime of willfully and maliciously killing an animal from the specific intent crime of malicious destruction of property.²⁷

Given the construction of the animal cruelty statutes preceding MCL 750.50b(2), and the fact that "willful" may be interpreted to describe a purposeful action in the context of a crime, we find that the Legislature enacted the current animal torture statute as a general intent crime. Accordingly, the trial court properly instructed the jury that defendant could be convicted of this crime if he "killed and/or tortured an animal or did anything that resulted in the killing or torturing of an animal."

To the extent defendant alternatively suggests that the trial court improperly instructed the jury on the element of malice, we also disagree. Again, the trial court instructed the jurors that to convict defendant they would have to find that defendant: (1) killed or tortured an animal or did anything that resulted in such an outcome; (2) knew that his actions were wrong at the time he committed this crime; (3) intended to cause physical or mental harm to an animal; and (4) had no just cause or excuse for his actions. Defendant alleges that this instruction was inadequate because malice in this instance required proof of an intent to kill or torture the horses, or intentionally committing an action that defendant knew created a high risk that the horses would be killed or tortured. Conversely, the prosecution argues that the trial court's instruction favored defendant in this regard because it went beyond a general showing of malice and required proof that defendant had a specific intent to cause physical or mental damage to the horses.

Malice has been described an essential element in a conviction for animal cruelty.²⁸ While defendant claims that the malice required under MCL 750.50b(2) is akin to the malice required in the context of murder, he fails to cite any authority to support his claims. Moreover,

²³ See *People v Pigula*, 202 Mich App 87, 90; 507 NW2d 810 (1993).

²⁴ We note that MCL 750.377 was repealed by 1994 PA 126, effective March 30, 1995.

²⁵ See *Culp*, *supra* at 457-458; *People v Tessmer*, 171 Mich 522, 526-527; 137 NW2d 214 (1912); see also 2B Michigan Criminal Law & Procedure, Animals, § 38:6, p 439-440.

²⁶ See *Tessmer*, *supra* at 526-527.

²⁷ *Culp*, *supra* at 457-458.

²⁸ See *Tessmer*, *supra* at 525; 1 Michigan Law & Practice, Animals, § 11, p 443.

in *People v Iehl*,²⁹ this Court held that the element of malice under MCL 750.377, "requires only that the jury find that defendant 1) committed the act, 2) while knowing it to be wrong, 3) without just cause or excuse, and 4) did it intentionally or 5) with a conscious disregard of known risks to the property of another." Considered as a whole, we find that the trial court's instructions properly conveyed the element of malice to the jury.

III. Sufficiency of the Evidence

Defendant's sufficiency of the evidence argument is largely based on the assumption that MCL 750.50b(2) is a specific intent crime. Indeed, defendant concedes that there was sufficient evidence to support his conviction if the statute only requires a general intent. Nevertheless, we must address defendant's argument that there was insufficient evidence to show that he possessed the requisite malice.

In sufficiency of the evidence claims, this Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.³⁰ Circumstantial evidence and reasonable inferences drawn from it may be sufficient to establish the elements of a crime.³¹ Minimal circumstantial evidence is sufficient to prove an actor's state of mind.³²

Here, several witnesses testified that defendant intentionally threw fireworks at the hunt club stable in an attempt to scare the horses. The record further shows that as a result of his actions, nineteen horses were either tortured or killed in the ensuing fire. Defendant presented no justifications or excuses for his actions. And as evidenced by his behavior after throwing the fireworks, defendant clearly knew his actions were wrong. Accordingly, we find that there was sufficient evidence to support defendant's conviction under MCL 750.50b(2).

Affirmed.

Gage, P.J., concurred.

/s/ Jessica R. Cooper
/s/ Hilda R. Gage

²⁹ *People v Iehl*, 100 Mich App 277, 280; 299 NW2d 46 (1980), citing CJI 32:1:01.

³⁰ *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

³¹ *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003).

³² *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).